

PHILLIPS, LYTLE, HITCHCOCK, BLAINE & HUBER LLP

**Memorandum**

**TO: DONALD BURTON  
DAVID HAHN-BAKER  
ELLEN NEUMAIER  
MICHAEL T. ORTALANO  
MICHAEL RAAB  
NANCY SMITH  
JOHN L. WHITE**

**FROM: MICHAEL B. POWERS**

**DATE: APRIL 24, 2003**

**RE: ERIE COUNTY COOPERATIVE  
PESTICIDE NOTIFICATION PROGRAM**

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Thanks to everyone for making our Erie County Cooperative Pesticide Notification Program ("Program") a reality. This will be a one-year pilot Program for Erie County sponsored by the Erie County Environmental Management Council. If successful, it is anticipated that it will continue with any necessary changes and improvements.

The following will memorialize the Program to which we have agreed, pending approval of County Executive Giambra, all necessary lawn care industry participants and environmental representatives. A summary of this Program, including its costs and procedures, will be made available to the public.

**OUTREACH**

An extensive outreach program will be conducted to ensure, to the extent possible, that every resident of Erie County who wishes to be notified of lawn care pesticide applications on neighbors' properties will be notified. This Program is not intended to and will not address the benefits or dangers of various pesticides. Nor will it apply to farms or indoor applications.

The first step will be issuance by the County Executive of a Press Release describing this Program. There may also be a press event. These events should take place by April 28, 2003, if possible.

We will also use newspaper and magazine advertisements, television and radio ads, public events, Internet postings, lawn care industry meetings and mailings, and, hopefully, dissemination of information by groups such as the League of Women Voters,

NYPIRG, County Extension Services, Buffalo Pest Management Board, Erie County Environmental Management Council, conservation groups in local municipalities and Environmental Management Councils in adjoining counties. This information, including posters and lawn flags, will also be made available to stores that sell pesticides. Those stores will be asked to distribute flags to customers who apply pesticides to their own lawns. We hope to have these efforts underway by May 1, 2003 and May 15 at the latest.

We will make every effort to secure the agreement of the County Executive and County Legislators to send an information piece to their constituents along with a registration form. We hope to have those mailings out by May 15, 2003. If this effort proves to be unworkable, the County will undertake this mailing.

John White and Nancy Smith will jointly create the text and pictorial information that is to be disseminated to the public. A graphic designer will be retained to create the final brochure, flyers, posters and other information pieces. We hope to have these tasks accomplished by May 1, 2003.

These outreach efforts will seek to ensure that everyone in Erie County is notified of this Program and how it works, and is given the opportunity to ask questions and register to be notified of pesticide applications.

### **REGISTRATION**

A form will be made available to all Erie County residents who wish to be notified of lawn care pesticide applications. It will request their names, addresses, telephone numbers, telefax numbers and email addresses. It will also allow registrants to express a preference for the form of notification. Applicators will be required to provide a written notice to registrants either by email, fax, regular mail or by personal visit. The lawn care industry will not be required to deliver the written notice in any specific manner, but will use its best efforts to honor registrants' preferences.

Residents will become part of an electronic registry when they return the form by mail, telefax, email or by calling the County hotline or registering on a website, both of which will be created by the County for this purpose.

The electronic registry will be created using a GIS mapping tool, which will be accessed via the internet by a committee established by the lawn care industry ("Registry Committee"). The mapping tool will automatically identify registrants within a 200 ft. target zone or abutting properties, depending on the pesticide application. This mapping tool will not only allow both the lawn care industry and the County to have immediate access to the registry, but will also enable citizens to access registry information directly through the internet.

The County will create and staff its hotline and website by April 17, 2003. It will also receive and promptly forward to the Registry Committee all registrants' information.

## **NOTIFICATION**

Pesticide applicators, resident in Erie County and those outside Erie County who do business in Erie County, will provide 48 hours notice of pesticide spraying to all registrants who live within 200 feet of a homeowner's property or County owned property where pesticide spraying is to take place. In addition, residents whose property abuts a homeowner's or County owned property where granular pesticides are being applied will be notified as well. Notification shall be made by email, fax, letter or personal delivery of a written notice. Delivery will be in the form requested by the registrant if the applicator determines that form to be acceptable. This program will apply to spray, granular, restricted use and general use pesticides. It will also apply to registrants living in close proximity to cemeteries. The parties are hopeful that the County Executive will encourage golf courses to participate in the Program.

If, due to unforeseen circumstances such as weather conditions or employee absenteeism, a scheduled application is delayed, registrants will still be provided 48 hours notice of the application unless they agree to a shorter notice period. Notice under these circumstances may be made by the aforementioned methods, or by phone.

Erie County will use its GIS system to identify for the lawn care industry all properties within 200 feet of each registrant's home. It is anticipated that this task will be substantially complete by May 15, 2003.

The applicators will continue to place flags on lawns to which they are applying pesticides.

## **OVERSIGHT/MONITORING**

Questions, comments or complaints can be made by registrants or others to the Erie County hotline, the County website or to the Registry Committee. Questions will be answered by the entity that receives them or by some designee. Comments and complaints received by the County will be recorded and forwarded to the Registry Committee (or another committee established to oversee the program). That committee will report back to the County on the nature of the complaint, its investigation, action taken and whether the complainant was satisfied with the action taken. The County will periodically contact complainants to ensure that their concerns have been addressed.

## **ENFORCEMENT**

The lawn care industry will establish a committee to investigate alleged violations of the Program ("Enforcement Committee"). Enforcement will take a number of forms. During the outreach phase of the program, the names of pesticide applicators who have agreed to participate in the program, as well as those who have refused to participate, will be published prominently and as frequently as possible. Pesticide applicators may create a sticker

to be applied to their vehicles advising that they are participants in this program. Additional publication of participants and non-participants by the County, environmental groups, the lawn care industry or others will be encouraged.

When a complaint is received by the County and forwarded to the Enforcement Committee, or when one is received by the lawn care industry in the first instance, the complaint will be recorded. The complainant's name, address and the nature of the complaint will be recorded in a complaint log book that will be available to the County at all times. The Enforcement Committee, with assistance from County representatives, will conduct an investigation and take appropriate action if warranted. The investigative efforts and the action taken will be reported to the County which will conduct periodic follow-ups to be sure the complainant is satisfied.

A phone call and written warning will be given to the applicator for its first offense. A record will be kept of this action and the complainant will be notified that the offense and warning have been recorded.

For a second violation, a fine of \$50.00 will be imposed upon any applicator who has agreed to participate in the Program. For those who have not agreed to participate in the Program and, therefore, against whom a fine would be ineffective, the applicator's name and nature of the violation will be provided to various news organizations and published whenever and wherever possible. By "second violation", it is understood that this means the failure to notify the same registrant on a second occasion.

For a third violation, an applicator who has agreed to participate in the Program will be fined \$250.00 and his name will be provided to news organizations and published wherever and whenever possible. By "third violation", it is understood that this means the failure to notify the same registrant on a third occasion.

Whether applicators who refuse to participate or those guilty of multiple violations can or should be barred from City, County, State or Federal contracts is an open question that should be explored. We should also explore whether County bid specifications can include a requirement, where applicable, that the bidder be a participant in this Program.

### **REVIEW/ASSESSMENT**

A Request For Proposal ("RFP") will be prepared by June 1, 2003 for the purpose of retaining an independent consultant to conduct a thorough review of this pilot Program, including, but not limited to, the effectiveness of the outreach and enforcement procedures, compliance by applicators and the relative costs of the Program. Responses to the RFP will be due June 15, 2003. The consultant will be selected based upon responses to the RFP with assistance from a committee comprised of representatives of the lawn care industry, environmental groups and Erie County ("Review Committee"). The consultant shall supply representatives of the County, environmental groups, the lawn care industry and me with his/her observations and advice as the season progresses. The consultant's final written report will be

prepared and circulated to the same people, the Erie County Executive and Erie County Legislators by October 1, 2003. Copies of that report will be made available to the public.

Representatives of the lawn care industry, environmental groups and the County will then meet to decide whether the Program should be continued for a second year and, if so, whether modifications are required. If modifications are required, they will be made and the revised program will be launched prior to the 2004 Spring application season. If it is determined that the Program was not successful, either a new pilot program will be developed or these efforts will be discontinued.

### **COSTS**

The County will bear all in kind costs and the costs of the initial comprehensive mailing (either through the County Executive, County Legislators or otherwise). The County will also bear approximately one half of the out of pocket costs. The lawn care industry will contribute \$7,500 by April 28, 2003 and an additional \$7,500 by June 24, 2003 to cover the remainder of the out of pocket costs. A more detailed estimate of Program costs is set forth in the attachment to this memo.

#### **Erie County Environmental Management Council**

**By:**

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**Michael B. Powers, Chairman**

#### **Lawn Care Industry Representatives**

**By:**

\_\_\_\_\_  
**Donald Burton**

**By:**

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**Michael T. Ortalano**

**By:**

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**John L. White**

## ATTACHMENT

### Proposed Costs for Neighborhood Notification Program

#### Program Staffing

The County's responsibilities include: coordinating the development of outreach materials (press releases, posters, lawn flags, notice brochures, and registration forms), operating a telephone hotline and registration website, developing a notification registry using GIS mapping, coordinating the registration between the GIS unit and the industry committee, response and follow up regarding complaints, and coordinating program evaluation.

The amount of staff time necessary to manage these tasks is somewhat dependent upon the number of people registering to be notified. In order to coordinate the public outreach tasks and provide minimal staffing to cover the other tasks listed above about 50% of a full time staff person needs to be dedicated to this program for its one year duration.

Personnel Costs: 50% of a County Job Grade 12	\$ 20,000
<u>Fringe Benefits inc</u>	<u>\$ 5,000</u>
Total Staffing Costs	\$25,000

#### County In-Kind Costs

The most significant cost to the County will be the initial notification mailed to County residents. Mike Powers has indicated that county legislators may be willing to sponsor the initial mailings to the constituents in their districts. The other cost the county can internalize is the setup and monthly fees associated with the telephone hotline. The printing of some of the public information materials and registration forms could also be done in house however the proposal specifically references the use of a graphics designer and outside printer to produce quality and professional outreach materials.

Postage cost for mailings :	\$61,420 ( to be funded through Legislators)
Development of GIS Mapping Tool	\$ 2,250
County Staffing Costs (see above)	\$25,000
Hotline set-up and service charges:	\$ 615
<u>In-house Printing Costs:</u>	<u>\$ 9,000</u>
<b>Total In-kind Costs:</b>	<b>\$98,285</b>

#### Cash Costs

This category includes the elements of the program such as the graphics design, newspaper ads, and outsourced printing for which an actual cash budget is needed.

Newspaper Ads -	\$4,200
Radio -	\$1,000
Flyer & poster design-	\$2,500
Flyer & poster printing-	\$5,000
<u>Lawn flags -</u>	<u>\$2,000</u>
SUBTOTAL:	\$ 14,700

Evaluation of program	
<u>Success after one year -</u>	<u>\$18,000</u>
<b>Total Cash Costs</b>	<b>\$32,700</b>